

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LORI A GAUL
Claimant

APPEAL NO. 10A-UI-10700-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA RESIDENTIAL CARE INC
Employer

OC: 06/27/10
Claimant: Appellant (2R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 21, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 16, 2010. Claimant participated personally. Employer participated by Michelle Steege, Services Director. Exhibits One through Ten were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 28, 2010.

Claimant was suspended on June 25, 2010 by employer because claimant was ill. Claimant was off work for three days due to this suspension. After claimant returned to work she was paid back pay for the three days of suspension.

Claimant was discharged July 28, 2010 for a different reason. Claimant was told by the Dubuque Workforce office representatives that she should not call in her weekly claim until the appeal process is completed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was suspended for an act of misconduct when claimant violated employer's policy concerning illness.

The last incident, which brought about the suspension, fails to constitute misconduct because absenteeism due to illness is excusable. The administrative law judge holds that claimant was not suspended for an act of misconduct and, as such, is not disqualified for the receipt of

unemployment insurance benefits effective June 25, 2010. However, since claimant was paid her back pay she would not be entitled to benefits for the three lost days.

Claimant was discharged July 28, 2010. Claimant was told by a workforce representative to wait to call in her weekly claims until after the appeal process was over. These are separate and distinct issues ripe for adjudication but not noticed for this hearing. This matter is remanded for a new decision on the July 28, 2010 separation and whether the claim can be backdated.

DECISION:

The decision of the representative dated July 21, 2010, reference 01, is reversed and remanded. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. This matter is remanded for a hearing on the July 28, 2010 separation and on the issue of backdating the claim.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs